

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the matter of:)	Complaint No. R4-2004-0002
)	Mandatory Minimum Penalty
)	for
Dayton Superior Specialty Chemical Corp., dba Edoco)	Violation of California Water Code § 13376
22039 S. Westward Avenue)	and
Long Beach Manufacturing Plant)	Order Nos. 94-012 and 01-158
Long Beach, California 90810)	(NPDES No. CA0002941)

This Complaint to assess the mandatory minimum penalty pursuant to California Water Code (CWC) § 13385, subdivisions (h) & (i) is issued to Dayton Superior Specialty Chemical Corp., dba Edoco (hereinafter Permittee) based on findings of violations of waste discharge requirements prescribed in Order Nos. 94-012 and 01-158 (NPDES No. CA0002941, CI No. 4420).

The Executive Officer (Executive Officer) of the Regional Water Quality Control Board, Los Angeles Region (Regional Board) finds the following:

1. The Permittee operates the Long Beach Manufacturing Plant (hereinafter facility) located at 22039 S. Westward Avenue, Long Beach which blends, packs, and distributes chemicals for concrete repair and/or construction. The Permittee can discharge up to 5,330 gallons per day of single pass non-contact cooling water and up to 4.6 million gallons per day (MGD) of storm water runoff from discharge serial No. 001 (West) (Latitude 33°49'32", Longitude 118°13'36"); and up to 3.024 MGD of storm water runoff from discharge serial No. 002 (East) (Latitude 33°49'32", Longitude 118°13'32") at the facility. These wastewaters can exhibit acute toxicity (Atox) and pH, and are susceptible of containing arsenic (As), benzene, cadmium (Cd), chromium (Cr), cyanide (CN), lead (Pb), nickel (Ni), oil and grease (O&G), selenium (Se), silver (Ag), zinc (Zn) and other pollutants which can degrade water quality and impact beneficial uses of water, and which are defined as wastes under the Porter-Cologne Water Quality Control Act (CWC § 13000 et seq.). The wastewater flows via a storm drain to the Dominguez Channel, a navigable water of the United States.
2. From February 22, 1994 to October 25, 2001, the Permittee discharged wastewater from the facility under waste discharge requirements (WDRs) contained in Order No. 94-012 adopted by the Regional Board on February 28, 1994.

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3. On October 25, 2001, the Regional Board adopted Order No. 01-158 which rescinded Order No. 94-012 except for enforcement purposes and imposed new WDRs on the discharge of treated wastes from the facility.
4. Order No. 94-012 (Part A, Section b, page 4) included the following effluent limitations for acute toxicity (Atox), benzene, chromium (Cr), nickel (Ni), and silver (Ag):

Constituent	Unit of Measure	Discharge Limitations (daily maximum)
Atox	% survival	> 70
Benzene	µg/L	1.0
Cr	µg/L	50
Ni	µg/L	100
Ag	µg/L	50

µg/L = micrograms/liter

5. Order No. 01-158 (Part I, Section B, pages 8 and 10) includes the following effluent limitations for benzene, pH, cyanide (CN), oil and grease (O&G), and zinc (Zn):

Constituent	Unit of Measure	Discharge Limitations (daily maximum)	Discharge Limitations (monthly average)
Benzene	µg/L	143	71
pH	Standard Units	>6.5 and <8.5	-
CN	µg/L	1.0	0.5
O&G	mg/L	15	10
Zn	µg/L	675*	-

mg/L = milligrams/liter; µg/L = micrograms/liter

*interim limitation

Any discharge containing pollutants violating the effluent limitations set in the waste discharge requirements is prohibited by CWC § 13376.

6. Among the provisions in the Permittee's waste discharge requirements are the requirements to implement a discharge monitoring program and to prepare and submit quarterly NPDES self-monitoring reports to the Regional Board.
7. Ten (10) violations of Order No. 94-012 and eight (8) violations of Order No. 01-158 were noted in the Permittee's self-monitoring reports during the period January 2000 through November 2002. These violations include effluent limit exceedances for Atox, pH, benzene, Cr, CN, Ni, O&G, Ag, and Zn. The violations are identified in Table 1 attached hereto and incorporated herein by reference.

8. CWC § 13385(h) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation. Pursuant to CWC § 13385(h)(2) a “serious violation” is defined as any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to § 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to § 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.
9. CWC § 13385(i) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation whenever the permittee violates a waste discharge requirement effluent limitation in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations within that time period.
10. A portion of the penalty not to exceed fifteen thousand dollars (\$15,000) plus fifty percent (50%) of the penalty amount that exceeds fifteen thousand dollars (\$15,000) may be directed to be expended on a Supplemental Environmental Project (SEP) pursuant to CWC § 13385(l).
11. The maximum amount of administrative civil liability assessable pursuant to CWC § 13385 for each day of violation is \$10,000 per day of violation plus \$10 times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

YOU ARE HEREBY GIVEN NOTICE THAT:

12. The Executive Officer proposes that the Permittee be assessed a mandatory minimum penalty in the amount of \$48,000 for the violations which occurred during the 1st and 2nd Quarters of 2000, 1st and 4th Quarters of 2001, 2nd and 4th Quarters of 2002. Refer to Table 1 for the calculation of the amount of mandatory minimum penalty.
13. A hearing shall be conducted on this Complaint by the Regional Board or Regional Board Hearing Panel (Hearing Panel) within 90 days after service of this Complaint on the Permittee pursuant to CWC §§ 13228.14 and 13323. The Permittee will be notified of the date, time and location of the hearing. The Permittee may waive the right to a hearing. Should the Permittee choose to waive the right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return the executed waiver to the Regional Board at 320 West 4th Street, Suite 200, Los Angeles, CA 90013, to be received by the Regional Board by the close of business on March 9, 2004. If the hearing is waived, the following options are available to satisfy the civil liability:
 - a. A check in the amount of \$48,000 (payable to the State Water Resources Control Board Cleanup and Abatement Account) shall accompany the signed waiver; or
 - b. The Permittee may propose to pay up to \$31,500 of the civil liability by:

- i contributing to a SEP on the Regional Board approved SEP List at www.swrcb.ca.gov/rwqcb4/html/programs/enforcement.html, or
- ii carrying out the Permittee's own independent SEP.

In the event that the Permittee proposes to invest in a SEP, a check in the amount of \$16,500 (payable to the State Water Resources Control Board Cleanup and Abatement Account) together with the Permittee's written statement confirming that the Permittee contributed to a SEP on the SEP List or proposes to carry out an independent SEP will be submitted along with the executed waiver and received by the Regional Board by the close of business on March 9, 2004.

If the Permittee elects to contribute to a SEP on the SEP List, the Permittee shall pay \$31,500 to the chosen SEP by the close of business on March 9, 2004, and notify the Regional Board of the date, amount and method of payment by the close of business on March 9, 2004.

If the Permittee proposes to carry out an independent SEP, a detailed description of the SEP shall be received by the Regional Board by the close of business on March 9, 2004. A proposal for an independent SEP will be subject to public notice and approval of the Regional Board. Should the Regional Board not approve the Permittee's proposal for an independent SEP, or should the Permittee later fail or elect not to implement the proposed independent SEP, the remainder of the civil liability will be due and payable within 30 days of such an event.

- 14. Notwithstanding the issuance of this Complaint, the Regional Board shall retain the authority to assess additional penalties for violations of the requirements of the Permittee's waste discharge requirements.
- 15. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code § 21000 et seq., in accordance with California Code of Regulations, title 14, § 15321.
- 16. Regulations of the US Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.

February 5, 2004

Dennis A. Dickerson
Executive Officer
Los Angeles Regional Water Quality Control Board

WAIVER OF THE RIGHT TO A HEARING

By signing below and returning this Waiver, I hereby waive the right of Dayton Superior Specialty Chemical Corp., dba Edoco to a hearing before the Regional Board to dispute the allegations and civil liability set forth in Administrative Civil Liability Complaint No. R4-2004-0002 (Complaint) issued by the Regional Board Executive Officer. Dayton Superior Specialty Chemical Corp., dba Edoco understands that this Waiver gives up the rights to contest the allegations of the Complaint and the amount of civil liability it imposes.

Dayton Superior Specialty Chemical Corp., dba Edoco elects to pay the civil liability in the following manner [check the relevant boxes]:

- ☐ Enclosed herewith in full payment of the civil liability is a \$48,000 check payable to "State Water Resources Control Board Cleanup and Abatement Account."

Or

- ☐ Enclosed herewith are a \$16,500 check payable to "State Water Resources Control Board Cleanup and Abatement Account" and one of the following items:
- ☐ Proof of payment of at least \$31,500 to a Supplemental Environmental Project (SEP) listed on the Regional Board-approved SEP list, or
 - ☐ A detailed description of an independent SEP estimated to cost at least \$31,500 which is acknowledged to be subject to a noticed Regional Board hearing and approval.

Dayton Superior Specialty Chemical Corp., dba Edoco understands that this Waiver gives up the rights to argue against the allegations made by the Executive Officer in this Complaint and against imposition of, and the amount of, civil liability imposed. Dayton Superior Specialty Chemical Corp., dba Edoco also understands that if an Administrative Civil Liability Order is adopted by the Regional Board, payment in full will be due thirty days after the date of the adoption of the Order.

I hereby affirm that I am duly authorized to act on behalf of and to bind Dayton Superior Specialty Chemical Corp., dba Edoco in the making and giving of this Waiver.

Dayton Superior Specialty Chemical Corp., dba Edoco

Date: _____

By: _____
(Signed name)

(Printed or typed name)

Position: _____